

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES GOTON,

Plaintiff,

No. 12-cv-00194 GBW/CG

v.

SIERRA COUNTY SHERIFF'S DEPUTIES
NOAH THOMAS PESTAK, LUIS ORTEGA,
JOE TREJO, JEFF JONES, CLAYTON REID,
and SIERRA COUNTY SHERIFF'S DEPARTMENT,

Defendants.

ORDER

THIS MATTER comes before the Court on *Defendants' Motion to Compel May 16, 2012 Handwritten Statement and Typewritten Versions Thereof* ("Motion to Compel"), (Doc. 59), *Defendants' Memorandum in Support of Their Motion to Compel May 16, 2012 Handwritten Statement and Typewritten Versions Thereof*, (Doc. 60), *Plaintiff's Response to Defendant Pestak's Motion to Compel May 16, 2012 Handwritten Statement and Typewritten Versions Thereof* ("Response"), (Doc. 78), and *Defendant Pestak's Reply in Support of Defendants' Motion to Compel May 16, 2012 Handwritten Statement and Typewritten Versions Thereof*, (Doc. 85).

At a hearing held December 18, 2012, on the Motion to Compel and the related filings, the Court found that the statement was an attorney-client communication, and therefore is privileged. (Doc. 97). Attorney-client communications in the presence of a third party that is not the agent of either the client or the attorney are generally not protected by privilege. *Weatherford v. Bursey*, 429 U.S. 545, 554 n.4 (1977). An agent "is a person who. . . represents the principal in dealings with third persons or transacts

some other business, manages some affair, or does some service for the principal, with or without compensation.” NMRA, Civ. UJI 13-401. Plaintiff’s testimony at the hearing, and the transcript from his deposition, indicate that the woman who typed his statement is an agent who performs services for Plaintiff. (See Doc. 60-4 at 3 where Plaintiff discusses his illegible handwriting: “Of course my handwriting isn’t too -- too -- . . . that’s why I have those girls. They -- they do that for me.”) The Court finds that Plaintiff has not waived attorney-client privilege with regard to the statement. Defendants’ Motion to Compel is **DENIED**.

A handwritten signature in cursive script, appearing to read "Carmen E. Garza", written in black ink.

CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE